

REMARKS**Status of the claims**

Claims 1, 5-14, and 21-29 are currently pending.

Claims 1 and 14 are amended herein.

Support for amendments

Claims 1 and 14 are amended to specify that the “pigment component does not comprise a nacreous material.” Support is found in the application as filed in the paragraph spanning page 14, line 19 to page 15, line 5, which describes white nacreous materials and colored nacreous materials and states that “these materials are preferably not used in the present invention.” Accordingly, no new matter is introduced by the claim amendments.

Interview summary

Applicants would like to thank Examiner Kantamneni and Supervisory Examiner Padmanabhan for the courtesies extended to Applicants’ representatives Jonathan Ball and Rita Wu during a telephonic interview held May 19, 2009. The rejections under 35 U.S.C. § 103 over U.S. Patent No. 6,511,672 (“Tan”) in view of U.S. Patent No. 3,647,492 (“Chapman”) and U.S. Patent No. 5,800,816 (“Brieva”) were discussed and it was proposed that claim amendments would be made to expedite allowance. As discussed during the interview, independent claims 1 and 14 are amended herein to specify that the pigment component “does not comprise a nacreous material.”

Claim rejections**35 U.S.C. § 103**

Claims 1, 5-10, 13, 14, 21-26, and 29 stand rejection under 35 U.S.C. § 103 over U.S. Patent No. 6,511,672 (“Tan”) in view of U.S. Patent No. 3,647,492 (“Chapman”) and claims 11, 12, 27, and 28 stand rejected under 35 U.S.C. § 103 over Tan in view of Chapman and further in view of U.S. Patent No. 5,800,816 (“Brieva”). Applicants traverse these rejections for reasons already of record.

As discussed at length in Applicants' previous submissions, Tan's second platelet is plainly said not to match skin tone and therefore, even assuming for the sake of argument that it could be a pearlescent pigment, it cannot be "a pearlescent component" which "matches in shade a natural skin tone benchmark shade," as required by the instant claims. The Examiner nevertheless contends that one skilled in the art would have been motivated to bind together Tan's first and second platelets -- which are said to match skin tone when combined -- using calcium stearate because Chapman teaches the use of calcium stearate to bind colorants to pearlescent pigments. The Examiner's contention is misplaced because Tan's "second platelet" is not said to be a "pearlescent component" and despite the mention of bismuth oxychloride as a possible substrate, it is not seen how a pearlescent effect would be achieved because, regardless of the substrate, Tan's second platelet is coated with spherical light scattering materials. See Col. 3, lines 31-34. That light scattering is not consistent with the pearlescent effect is evidenced by Tan, itself, which explains that "[p]earl pigments reflect, refract and transmit light." See Col. 4 lines 50-56. Applicants therefore respectfully submit that one skilled in the art simply would not have had a reasonable expectation of creating "a pearlescent component comprising a bismuth oxychloride-containing pearlescent ingredient bonded to a colorant with calcium stearate, wherein said pearlescent component matches in shade a natural skin tone benchmark shade" by binding Tan's first and second platelets.

Accordingly, Applicants submit that Tan fails to teach a pearlescent component meeting the limitations of the instant claims. However, even with the Examiner's hindsight contention that the first and second platelets of Tan could be bonded together with calcium stearate to provide Applicants' "pearlescent component," the rejection is still deficient because Tan does not disclose "a pigment component that also matches in shade said benchmark shade."

Tan's "non-interference pigments" described at column 6, lines 15-27 cannot correspond to the pigment component of the present claims since these non-interference pigments are not said to match the natural skin tone. Rather, Tan explicitly states that these non-interference pigments are used "to fine tune the closeness of the color to the wearer's skin." Col. 5, lines 58-65. Accordingly, the statement in column 6, lines 24-25 of Tan that the non-interference pigments provide "color to match the color of the skin" must be understood in its correct context as referring to the "fine tuning" of the combined first and second platelets, which fine-tuning "is provided by the presence

of at least one non-interference pigment.” Col. 5, lines 58-65. Tan cannot be fairly read as disclosing non-interference pigments which are themselves shade matched to skin tone.

It was explained during the May 19, 2009 interview that the Examiner considers the “interference pigments” of Tan to satisfy the limitation of “a pigment component that also matches in shade said benchmark shade.” Tan states that in “one embodiment, the composition also comprises a standard interference pigment” (col. 4, lines 40-41) and that “interference pigments of different colors or types are combined in the present invention to blend an appropriate shade or intensity of color to match the natural skin tone” (col. 4, line 66-col. 5, line 2). While the “pigment component” of the present invention embraces combinations of pigments which together match skin tone, the interference pigments of Tan are not the type of pigments called for by the claim. Applicants direct the Examiner’s attention to the paragraph beginning on page 14, line 19 of Applicants’ specification wherein it is stated that “[o]ther pearls are white nacreous materials, such as mica covered with titanium oxide or covered with bismuth oxychloride; and colored nacreous materials, such as titanium mica with iron oxides, titanium mica with ferric blue or chromium oxide, titanium mica with an organic pigment or the aforementioned type.” These white and colored nacreous materials “are preferably not used in the present invention.” (p. 15, lines 2-3). These nacreous materials are the same pigments which Tan refers to as interference pigments. Accordingly, Applicants submit that the interference pigments of Tan would not be understood to correspond to the “pigment component” of the present claims.

To make this distinction explicit, independent claims 1 and 14 are amended herein to specify that the “pigment component does not comprise a nacreous material.” Thus, the interference pigments of Tan are neither “a pearlescent component comprising a bismuth oxychloride-containing pearlescent ingredient bonded to a colorant, wherein said pearlescent component matches in shade a natural skin tone benchmark shade” nor are they “a pigment component that also matches in shade said benchmark shade” as required by the instant claims because the interference pigments of Tan would be understood to be a “nacreous material.”

Having distinguished the independent claims from the art of record, Applicants submit that the claims dependent therefrom are patentable for at least the same reasons. However, Applicants reserve the right to separately address the patentability of those claims in the future, should that be necessary.

CONCLUSION

Applicants respectfully submit that the instant application is in condition for allowance. Entry of the amendments and an action passing this case to issue is therefore respectfully requested. In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

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